IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.443 OF 2005
IN
APPEAL FROM ORDER NO.419 OF 2005

Musakhan Madankhan ..Appellant
V/s
The Municipal Corporation of Greater Bombay. ..Respondent

Mr. A. S. Karwande for the Appellant.

CORAM: A.S.OKA,J.
DATE : 05.05.2005.

P.C.:

1. Rule. Respondent waives service. Challenge in the suit is to the action under section 351 of the Bombay Municipal Corporation Act, 1888. The Appellant has asserted in the plaint that he is in possession of shop No.11 and 12 in building known as 'Swastik Chamber'. According to him the notice under section 351 of The Bombay Municipal Corporation Act, 1888 relates to shop Nos.11 and 12 and the said shop Nos.11 and 12 are in existence prior to the year 1962. The Notice of Motion taken out by the Appellant has been dismissed by the Trial Court.

2. In this appeal I had appointed Shri. Subodh Tari, architect on the Panel of the Court Receiver, High Court Bombay as Court Commissioner by the order dated 4th April 2005. The Court Commissioner has submitted a report dated 20th April 2005. He has stated that he

visited the site and he has personally verified the City Survey Plan corrected upto year 1956 bearing sheet No.88. In paragraph No.15 of his report he has stated that shop No.11 is shown in the City Survey Plan corrected upto year 1956. In paragraph No.16 he has stated that existence of part of shop No.12 is shown in City Survey Plan corrected up to year 1956. He has further stated that the remaining part of shop No.12 is shown in City Survey Plan corrected upto year 1966. Thus, as per his report shop No.11 and part of Shop No.12 were in existence in the year 1956 and part of shop No.12 is constructed between year 1956 and 1966.

3. As per the policy of the Respondent-Corporation unauthorised structures errected for commercial use prior to 01.04.1962 are to be tolerated. At this it is not possible to come to the conclusion that the part of shop No.12 is constructed either before 01.04.1962 or after 01.04.1962.

4. Therefore, primafacie case is made out for grant of interim relief in this appeal. It is made clear that the tentative finding recorded above are on the basis of the report of the Commissioner The Respondent-Corporation will be entitled to submit objections to the Commissioner’s report.

5. Hence, Civil Application is disposed of by directing

that till final disposal of the appeal both parties will maintain status-quo as of today in respect of the structures in dispute. It will be open for the Respondent-Corporation to file objections to the report of the Commissioner within period of eight weeks from today.

JUDGE